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8 17-1738 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 TRISTAN FORD,

11 Plaintiff,

12 v.

13 PREMERA BLUE CROSS,

14 Defendant.

CASE NO. C17-1738 MJP

ORDER ON MOTION TO DISMISS  
AND FOR SUMMARY  
JUDGMENT

15  
16 The Court has received and reviewed:

- 17 1. Defendant's Motion to Dismiss and for Summary Judgment (Dkt. No. 7),  
18 2. Plaintiff's Opposition to Motion to Dismiss (Dkt. No. 12),  
19 3. Premera's Reply in Further Support of Its Motion to Dismiss and for Summary  
20 Judgment (Dkt. No. 15),

21 all attached declarations and exhibits, and relevant portions of the record, and rules as follows:

22 IT IS ORDERED that the motion for summary judgment is GRANTED and this matter is  
23 DISMISSED with prejudice.  
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Plaintiff filed a claim for payment under the Plan which Premera only partially granted. Plaintiff appealed the denial; Premera denied the appeal on November 11, 2014. On November 15, 2017, Plaintiff filed this complaint in King County Superior Court. Defendant timely removed the matter to federal court. In the motion at issue here, Defendant moved for dismissal of Plaintiff's Insurance Fair Conduct Act ("IFCA") claim pursuant to FRCP 12(b)(6), and summary judgment dismissal of the entire lawsuit on the grounds that it is time-barred.

Motion for summary judgment

1 Plaintiff first argues that the Washington statutory breach of contract limitations period  
2 (six years; RCW 4.16.040) should apply. But the Supreme Court has clearly stated that  
3 in the absence of a controlling statute to the contrary, a provision in a contract may  
4 validly limit, between the parties, the time for bringing an action on such contract to a  
5 period less than that prescribed in the general statute of limitations, provided that the  
6 shorter period itself shall be a reasonable period.  
7 Order of United Commercial Travelers of America v. Wolfe, 331 U.S. 586, 608 (1947)(*cited*  
8 *with approval* in Heimeshoff, 134 S.Ct. at 611).

9 Plaintiff interposes several ineffectual arguments against adopting Defendant's position.  
10 One is that neither Plaintiff nor the Court received copies of the actual insurance contract. But  
11 both Plaintiff and the Court received copies of the Plan summary (Dkt. No. 8-1) containing a  
12 section entitled "Limits on your right to judicial review" which unequivocally states that "[a]ny  
13 legal action initiated under the plan must be brought no later than one year following the adverse  
14 determination on the appeal." (*Id.* at 84.) Defendant also submitted into evidence a letter which  
15 it sent to Plaintiff following denial of appeal which likewise advised him of his right to file a  
16 lawsuit and the timeframe in which to do so. (Dkt. No. 8-7.)

17 Plaintiff asserts that there are no Washington cases upholding the shorter limitations  
18 period, but that is a curious defense in the face of a Supreme Court case indicating that the  
19 practice is permissible. Additionally, there is Ninth Circuit authority which accepted a plaintiff's  
20 concession that a one-year limitation period under analogous circumstances was reasonable.  
21 Scharff v. Raytheon Co. Short Term Disability Plan, 581 F.3d 899 (9th Cir. 2009).

22 Plaintiff maintains that the issue of whether reducing a six-year limitations period on  
23 contract actions to one year is "reasonable" is a "question of material fact." (Dkt. No. 12,  
24 Response at 7.) Plaintiff does not elaborate, and the Court fails to see how this presents a factual  
issue. While the Plan's limitation period is unquestionably shorter, the Court is presented with a

1 Supreme Court ruling that “[Plaintiff] does not dispute that a hypothetical 1-year limitations  
2 period commencing at the conclusion of internal review would be reasonable... We cannot fault  
3 a limitations provision that would leave the same amount of time...” Heimeshoff, *supra* at 612.  
4 It is controlling precedent in this matter.

5 Plaintiff makes two other last-ditch attempts to salvage his case. The first is an argument  
6 that his bad faith claim sounds in tort and was filed within the three-year limitations period for  
7 tort actions in Washington. RCW 4.16.080(2). As the argument on adopting Washington’s six-  
8 year contract limitation period fails, this must fail as well. Additionally, Defendant establishes  
9 conclusively that Plaintiff’s lawsuit was filed more than three years after the final denial of  
10 Plaintiff’s internal appeal.

11 Finally, Plaintiff interposes a cursory FRCP 56(d) argument, but it is stated in a summary  
12 and conclusory fashion that is not in keeping with either the letter or spirit of the procedural rule.  
13 Plaintiff makes no showing of what evidence he thinks additional discovery would produce, nor  
14 how that evidence would alter the outcome of the Court’s ruling. On that basis, his 56(d) request  
15 is deficient and will be denied.

16 The Court finds that, in the face of the Supreme Court Heimeshoff ruling, these parties  
17 had a right to contract for a one-year limitation period, and that such a period is reasonable.  
18 Plaintiff did not timely file his lawsuit and Defendant is entitled to the summary judgment it  
19 seeks.

20 Motion to dismiss

21 Defendant moves, pursuant to FRCP 12(b)(6), to dismiss Plaintiff’s IFCA claim on the  
22 grounds that IFCA (RCW 48.30 *et seq.*) specifically excludes “health plan[s] carried by a health  
23 carrier.” RCW 48.30.015(7). While the Court believes the argument is meritorious, this portion  
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1 of Defendant's motion is superfluous in the face of the complete summary judgment dismissal  
2 already obtained.

3 **Conclusion**

4 Defendant has successfully established that there are no genuinely disputed issues of  
5 material fact and that it is entitled to summary judgment as a matter of law. Plaintiff has failed to  
6 meet his burden on summary judgment and failed to establish his right to a continuance of this  
7 motion under FRCP 56(d). The Court finds that the Plan's one-year limitation period is  
8 reasonable and enforceable, and that Defendant is entitled to a ruling that this lawsuit was not  
9 timely filed thereunder.

10 Accordingly, Plaintiff's lawsuit is DISMISSED with prejudice.

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12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated: April 4, 2018.

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15 The Honorable Marsha J. Pechman  
16 United States Senior District Court Judge  
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